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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

AUGUSTIN BARRERA GUZMAN

Defendant and Appellant.

H035200

(Santa Cruz County
Super. Ct. No. WF00323)

On August 11, 2009, defendant Augustin Barrera Guzman pleaded no contest to assault with a firearm (Pen. Code, § 245, subd. (a)(2); count 1),¹ two counts of unlawful possession of ammunition (§ 12316, subd. (b)(1); counts 2 & 3), and active participation in a criminal street gang (§ 186.22, subd. (a); count 4). Defendant also admitted as to count 1 that the offense was committed for the benefit of a criminal street gang (§ 186.22, subd. (b)(1)(C)), that he inflicted great bodily injury on the victim (§ 12022.7, subd. (a)), that he used a firearm during the commission of the offense (§ 12022.5, subds. (a) & (d)), and that he had served a prior prison term (§ 667.5, subd. (b).) On January 8, 2010, the trial court sentenced defendant to 26 years 4 months in prison. On appeal, defendant's appointed counsel has filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436.

¹ All further statutory references are to the Penal Code unless otherwise indicated.

As defendant was convicted by plea, the following summary of his offenses are taken from the probation report. On May 4, 2008, at approximately 8:25 p.m., Watsonville police responded to a reported shooting at a residence. Upon arrival at the residence, police entered the house and discovered a male lying on his back on the hallway floor, bleeding from his head and mouth. According to family members, the victim was in his bedroom when he heard gunshots and proceeded to walk into the hallway where he was shot. The victim was transported to a Bay Area trauma center where he underwent numerous operations. He sustained life-long injuries including headaches, dizziness, shoulder pain, and speech problems.

A witness who was in the neighborhood heard three gunshots, a pause, and then another gunshot and observed a male enter a red GMC Yukon located in the middle of the street in front of the victim's house. With the description of the vehicle provided by the witness, including the license plate number, police learned that the Yukon was registered to defendant's wife. After arresting defendant's wife, she claimed that she had rented the Yukon. Police reviewed phone calls made by defendant's wife from jail in which she referred to defendant as being the one who shot the victim. Defendant's wife later admitted that she was driving the vehicle on the night the shooting occurred, but said that defendant was the one who shot the victim.

In addition to defendant's wife, there were at least two other known gang members who were present in the Yukon at the time of the shooting. After the shooting, defendant and one of the gang members drove to another location where they cleaned the vehicle and attempted to destroy fingerprint evidence. Days prior to the shooting, defendant and the same gang member had been seen together purchasing ammunition. Defendant has several gang tattoos and has been known to associate with Norteño gang members and associates.

On June 3, 2008, 16 latent fingerprint impressions belonging to defendant were recovered from the Yukon. Fingerprint impressions belonging to defendant's wife and at

least one other known gang member were also recovered from the Yukon. Defendant was arrested on June 5, 2008.

Defendant was charged by second amended information filed August 11, 2009, with assault with a firearm (§ 245, subd. (a)(2); count 1), two counts of unlawful possession of ammunition (§ 12316, subd. (b)(1); counts 2 & 3), and active participation in a criminal street gang (§ 186.22, subd. (a); count 4). The information further alleged as to count 1 that defendant committed the offense for the benefit of a criminal street gang (§ 186.22, subd. (b)(1)(C)), personally inflicted great bodily injury on the victim (§ 12022.7, subd. (a)), personally used a firearm during the commission of the offense (§ 12022.5, subds. (a) & (d)), and had served a prior prison term (§ 667.5, subd. (b)).

On August 11, 2009, defendant pleaded no contest to counts 1 through 4 and admitted the four enhancements with the understanding that he would receive a maximum term of 30 years in prison.²

On October 8, 2009, a hearing was held in which the parties discussed the impact of a recent California Supreme Court opinion, *People v. Rodriguez* (2009) 47 Cal.4th 501 (*Rodriguez*), on defendant's plea. *Rodriguez* addressed section 1170.1, subdivision (f), "which prohibits the imposition of additional punishment under more than one enhancement provision for 'using . . . a firearm in the commission of a single offense.' " (*Rodriguez, supra*, at p. 504.) At a hearing on November 17, 2009, the court discussed the impact of *People v. Gonzalez* (2009) 178 Cal.App.4th 1325 (*Gonzalez*), on defendant's plea. In *Gonzalez*, the Court of Appeal explained that "subdivision (g) of [section 1170.1] prohibits the imposition of more than one enhancement 'for the

² The second amended information alleged, and defendant admitted, a gang enhancement within the meaning of section 186.22, subdivision (b)(1)(C) and a firearm use enhancement within the meaning of section 12022.5, subdivisions (a) and (d). The abstract of judgment incorrectly refers to the applicable statutes as "186.22 (B)(1)" and "12022.5 (a)(1)." We will order the abstract corrected accordingly.

infliction of great bodily injury on the same victim in the commission of a single offense’ ” (*Id.* at pp. 1331-1332.) Although the court in the present case could not impose all the enhancements contemplated by the parties in the original plea agreement, the People expressed their intention to honor the original plea agreement and “proceed with the understanding that [defendant] would get 27 years instead of 30 based on [*Rodriguez* and *Gonzalez*].”

On December 28, 2009, defendant filed a motion to withdraw his plea because he was “operating under mistake, ignorance, and inadvertence regarding the state of the law.” The trial court denied defendant’s motion to withdraw his plea, explaining that defendant did not have good cause because he was going to receive a lesser sentence “than what he had bargained for.”

On January 8, 2010, the court sentenced defendant to 26 years 4 months in prison. For count 1 (§ 245, subd. (a)(2) [assault with a firearm]), the court imposed the upper term of four years, plus 10 years for the section 186.22, subdivision (b)(1)(C) gang enhancement, 10 years for the section 12022.5, subdivisions (a) and (d) firearm use enhancement, and one year for the prison prior (§ 667.5, subd. (b)). The court imposed consecutive eight-month terms (one-third the middle term of two years) as to counts 2 and 3 (§ 12316, subd. (b)(1) [unlawful possession of ammunition]). The court stayed the middle term sentence of two years as to count 4 (§ 186.22, subd. (a) [active participation in criminal street gang]) pursuant to section 654³ and the three-year great bodily injury enhancement (§ 12022.7, subd. (a)) pursuant to section 1170.1.⁴ As noted by the

³ Section 654, provides in relevant part: “An act or omission that is punishable in different ways by different provisions of law shall be punished under the provision that provides for the longest potential term of imprisonment, but in no case shall the act or omission be punished under more than one provision.”

⁴ Section 1170.1, subdivision (g) provides in relevant part: “When two or more enhancements may be imposed for the infliction of great bodily injury on the same victim

prosecution and confirmed by the court, “the ten year gang enhancement pursuant to [section] 186.22(b)(1)(C) was based on the great bodily injury and that is why [the section] 12022.7 [great bodily injury enhancement] was stayed.” (See *Gonzalez, supra*, 178 Cal.App.4th at pp. 1331-1332; *Rodriguez, supra*, 47 Cal.4th at pp. 508-509.)

Defendant was ordered to pay various fines and fees, and he was ordered to pay restitution to the victim. Defendant was granted 583 days of actual custody credits and 87 days pursuant to section 2933.1.⁵

Defendant filed a notice of appeal and request for certificate of probable cause on January 21, 2010. The court granted the request for a certificate of probable cause by order filed on January 25, 2010. We appointed counsel to represent defendant in this court. Appointed counsel has filed a brief that states the case and the facts but raises no issues. We notified defendant of his right to submit written argument in his own behalf within 30 days. That period has elapsed and we have received no response from defendant. Pursuant to *People v. Wende, supra*, 25 Cal.3d 436, and *People v. Kelly* (2006) 40 Cal.4th 106, we have reviewed the entire record and have concluded that there is no arguable issue on appeal other than the corrections of the clerical errors on the abstract of judgment.

The judgment is affirmed. The abstract of judgment is ordered modified to reflect the judgment by stating that the enhancements charged and found to be true include section 12022.5, subdivisions (a) and (d) rather than “12022.5 (a)(1),” and section 186.22, subdivision (b)(1)(C) rather than “186.22 (B)(1).” The abstract is also ordered

in the commission of a single offense, only the greatest of those enhancements shall be imposed for that offense.”

⁵ The abstract of judgment incorrectly reflects that defendant was granted 87 days of local conduct credits pursuant to section 4019 rather than section 2933.1. We will order the abstract corrected accordingly.

modified to reflect that local conduct credits were granted pursuant to section 2933.1.
The clerk of the superior court shall prepare a copy of the amended abstract of judgment
and forward it to the Department of Corrections and Rehabilitation.

BAMATTRE-MANOUKIAN, ACTING P.J.

WE CONCUR:

MIHARA, J.

MCADAMS, J.